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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/048,169	06/21/2002	Michael Walter Seitz	50215-047	4380

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EXAMINER

GORMAN, DARREN W

ART UNIT PAPER NUMBER

3752

DATE MAILED: 07/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/048,169

Applicant(s)

SEITZ, MICHAEL WALTER

Examiner

Darren W Gorman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 5-7 and 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 8-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 01/29/2002.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of species Group I in the reply filed on June 15, 2004 is acknowledged. The traversal is on the ground(s) that all claims read on species Group I, and all claims should be examined since examining two patentably distinct species is not unreasonable. This is not found persuasive because this office believes full consideration and examination of all submitted claims including the limitations of each of the distinct species in the present application would place an undue burden on the Examiner. Furthermore, Applicant has not submitted evidence or identified such evidence now of record showing the identified species to be obvious variants or clearly admitted on the record that this is the case.

The requirement is still deemed proper and is therefore made FINAL.

2. Although Applicant submitted that all claims read on the elected species, claims 5-7 and 11 clearly do not read on the elected species of Group I. Claims 5-7 and 11 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on June 15, 2004.

### ***Information Disclosure Statement***

3. The IDS filed on January 29, 2002 is hereby acknowledged and has been placed of record. Please find attached a signed and initialed copy of the PTO 1449.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

5. Claims 1-4 and 8-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the recitation "first and second guides arranged to guide respective feedstock wires via the inlet towards a point of intersection" is confusing in view of the disclosure and drawings. As shown in Figure 4, the feedstock wires (46) never pass through the inlet of the throat (24) as recited in claim 1.

Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seitz, WO 98/00574, in view of Laidler, USPN 5,927,604.

Seitz shows a thermal sprayer comprising a nozzle (10) defining a throat (12) having an inlet (14) and an outlet (16) and a gas flow path (18) aligned with the axis of the throat, at least

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first and second guides (22, 24) arranged to guide respective feedstock wires (26) via the inlet towards a point of intersection in or adjacent an end of the throat (see Figure 2), a power supply (not shown) arranged to be connected to the feedstock wires, and a supply of compressed air arranged to supply air to the throat (see page 6, line 25 through page 7, line 13), wherein the guides may advantageously be arranged to direct the feedstock wires to the point of intersection so that they define an angle of between 45 and 90 degrees between them (see page 6, lines 21-23).

Seitz, however, does not expressly teach the nozzle being formed from first and second body halves, each defining a portion of the throat.

Laidler shows a nozzle construction concept wherein first (14) and second (16) body halves form a nozzle (10), each half defining a portion of a throat (18), the body halves being separable in order to allow easier access for cleaning of the nozzle throat (see Figure 9 and Abstract).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the nozzle of Seitz from two separable body halves, as taught by Laidler, in order to allow easier access for cleaning of the nozzle throat.

***Allowable Subject Matter***

8. Claims 3, 4, and 8-10 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patents to Steyer, Wagner, Kasagi, Harrington et al., Bean, Crapo et al., Zurecki et al., Marantz et al., Belashchenko et al., Benary et al., and Baranovski et al. are cited as of interest.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W Gorman whose telephone number is 703-306-4205. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on 703-308-2087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Darren W Gorman  
Examiner  
Art Unit 3752

*DWG* 7/22/04  
DWG  
July 22, 2004

*Michael Mar*  
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